

Message Text

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SUBJECT: NEW LABOR COURT CASE - PEACE CORPS - MAURICIO MANOEL
DA SILVA

REF: (A) BRASILIA 3856 (B) BRASILIA 4287

1. AS FORECAST IN REF (A), WHICH REPORTED A SUIT BROUGHT BY
LUIS MANEIL DA SILVA, HIS BROTHER, MAURICIO MANOEL DA SILVA HAS
RETAINED THE SAME COUNSEL AND HAS BROUGHT A SEPARATE ACTION
AGAINST PEACE CORPS. THIS TELEGRAM REPORTS THE ELEMENTS OF THIS
NEW CASE AS PROMISED IN REF (B).

2. PEACE CORPS PERSONNEL DATA IDENTIFIES MAURICIO MANOEL DA
SILVA'S SERVICES TO PC AS FOLLOWS:

A. JULY 1, 1971 THROUGH FEB. 28, 1974 (NIGHT DUTIES)

HE WAS EMPLOYED AS A NIGHT-WATCHMAN FOR PC OFFICES. THE SALARY
WHICH BEGAN AT CR 400 MONTH WAS PAID BY THE LANDLORD. (IT IS NOT
IMMEDIATELY KNOWN WHETHER THE GUARD SERVICES WERE PROVIDED FOR IN
THE LEASE CONTRACT AND THEREFORE WHETHER THE COSTS THEREOF
WERE INCLUDED IN THE RENT, AND WHETHER UNDER THE TERMS OF THE LEASE
THE LANDLORD WAS A SEPARATE EMPLOYER FOR THE PURPOSE).

B. JULY 1, 1971 THOUGH FEB. 28, 1974 (DAY-TIME DUTIES)

DURING THE IDENTICAL INTERVAL PC CONTRACTED FOR MAURICIO'S
SERVICES DURING OFFICE HOURS AS A DRIVER, MESSENGER AND HANDY-MAN ON
A FULL TIME BASIS FOR THE MONTH OF JULY 1971 AND THEREAFTER FROM
5 TO 10 HOURS PER DAY AS NEEDED. THERE WAS NO RPT NO WRITTEN CONTRACT

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TO SUPPORT OR DEFINE THESE ARRANGEMENTS. HIS ESTIMATED MONTHLY EARNINGS WERE APPROXIMATELY CR 400/MONTH IN 1971, 500/MONTH IN 1972, 600/MONTH IN 1973, AND 700/MONTH IN 1974.

C. TRANSFER TO BENI CONTRACT

ON MARCH 1, 1971 MAURICIO MANOEL DA SILVA WAS TRANSFERRED TO THE CONTRACT INTO WHICH PC HAD ENTERED WITH ORGANIZATION BENI LTDA. (SEE REF (A) AS HIS BROTHER HAD BEEN. BENI IS RESPONSIBLE FOR THE COMPENSATION AND BENEFITS PROVIDED BY THE LABOR LAW FOR THE PERIOD MARCH 1, 1974 UNTIL MARCH 31, 1975 WHEN PC TERMINATED THE CONTRACT IN CONNECTION WITH CLOSING ITS RIO OFFICE.

3. IN HIS PETITION THE PLAINTIFF SEEKS:

A. ANNOTATION OF HIS WORK PERMIT FOR SERVICES RENDERED TO PC PRIOR TO MARCH 1, 1974 WHEN BENI LTDA. HIRED HIM AND THEREAFTER ANNOTATED THE WORK PERMIT PROPERLY.

B. COVERAGE UNDER THE FUNDO DE GUARANTIA OR COMPARABLE COMPENSATION FOR THE PERIOD JULY 1, 1971 TO MARCH 1, 1974.

C. VACATION PAY FOR DAYS EARNED BUT NOT ALLOWED TO BE TAKEN, IT IS ALLEGED, IN 1971, 1972, 1973 AND 1974.

D. PREMIUM COMPENSATION FOR NIGHT-TIME DUTIES.

E. MONETARY CORRECTION AND 13TH MONTH SALARY PAYMENTS FOR 1971, 1972, 1973, AND 1974.

F. NOTIFICATION OF THE TOTAL PERIOD OF SERVICE TO BE GIVEN TO THE REGIONAL LABOR OFFICE, INPS, AND NATIONAL HOUSING BANK. FOR ALL OF THE ABOVE HIS PETITION SEEKS CR 22,000 (US DOLLARS 2785).

4. COMMENT

THE SIMILARITY OF THE CLAIM TO THAT REPORTED IN REF (A) IS SELF-EVIDENT. IN THE EMBASSY'S VIEW THE ANALYSIS PRESENTED IN PARA 6 AND 7 OF REF (A) APPLY EQUALLY WELL TO HIS CLAIM WITH THE POSSIBLE EXCEPTION OF WHETHER THE LANDLORD CAN BE ESTABLISHED AS THE EMPLOYER FOR THE NIGHT-WATCHMEN FUNCTIONS. (THIS MAY OR MAY NOT PROVE POSSIBLE LIMITED OFFICIAL USE

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THE LANDLORD CONCEIVABLY COULD BE VIEWED AS PEACE CORP'S AGENT FOR THE TRANSACTION).

THUS, AS IN THE CASE OF LUIS MANOEL DA SILVA, THE EMBASSY HAS ADVISED PC OF ITS VIEW THAT THE PLAINTIFF IS ENTITLED TO COMPENSATION CALCULATED PURSUANT TO THE LABOR LAW AS FOLLOWS:

(1) SEVERANCE PAY FOR 3 YEARS CR 2100

(2) ANNUAL LEAVE (JULY 1971-FEB. 28, 1974)	CR 1785
(3) CHRISTMAS BONUS (13TH MONTH)	CR 1867
TOTAL	CR 5752
(US\$	728)

THIS CALCULATION ASSUMES THAT THE LANDLORD WAS A SEPARATE EMPLOYER FOR THE NIGHT-WATCHMAN FUNCTIONS. IF NOT, THE CALCULATIONS WOULD INCREASE TO APPROXIMATELY CR 12,000.

5. THE FORMER BRAZILIAN ADMINISTRATIVE OFFICER OF PC IS OF THE OPINION THAT WE CAN SETTLE BOTH CASES IN CONFERENCE WITH THE PLAINTIFFS AND COUNSEL IF AUTHORIZED TO OFFER LUIS MANOEL CR. 17,157 AND MAURICIO APPROXIMATELY CR. 6,000 (IF THE LANDLORD WAS A SEPARATE EMPLOYER) OR 12,000 (IF HE WERE OT).

6. STATE 124167 SUGGESTS THAT AN ATTEMPT AT A PROMPT AND REASONABLE SETTLEMENT WAS UNDER CONSIDERATION IN WASHINGTON. THE ACTING PEACE CORPS DIRECTOR AND THE EMBASSY STRONGLY ENDORSE THIS COURSE AND REQUEST AUTHORITY TO PROCEED THIS WEEK. IF THE ANSWER IS AFFIRMATIVE PLEASE AUTHORIZE THE ACTING DIRECTOR TO RETAIN THE SERVICES OF A MEMBER OF THE STAFF OF DR. BEKIN'S LAW FIRM IN RIO TO PARTICIPATE IN THE SETTLEMENT, OBTAIN THE ACUITTANCE AND RELEASE, AND INSURE THAT THE LITIGATION IS WITHDRAWN.
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